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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)
)
THE TENNIS CHANNEL, INC.)
) MB Docket
) No. 10-204
v.)
)
COMCAST CABLE COMMUNICATIONS,) File No.
LLC) CSR-8285-P
)
Complaint Alleging Program)
Carriage Discrimination)

Tuesday,
April 26, 2011

Volume 3

Hearing Room TW-A363

445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE JUDGE RICHARD L. SIPPEL
Chief Administrative Law Judge

Neal R. Gross & Co., Inc.
202-234-4433

APPEARANCES

On Behalf of Comcast Cable
Communications, LLC

MICHAEL P. CARROLL, ESQ
ANDREW N. DeLANEY, ESQ
EDWARD N. MOSS, ESQ
DAVID B. TOSCANO, ESQ
of: Davis Polk & Wardwell, LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

DAVID H. SOLOMON, ESQ
J. WADE LINDSAY, ESQ
of: Wilkinson, Barker and Knauer, LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037
(202) 783-4141

On Behalf of The Tennis Channel, Inc.

C. WILLIAM PHILLIPS, ESQ
PAUL SCHMIDT, ESQ
NEEME TRIVEDI, ESQ
of: Covington & Burling, LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018-1405

(212) 841-1081

LEAH E. POGORILER, ESQ
ROBERT SHERMAN, ESQ
STEPHEN A. WEISWASSER, ESQ
of: Covington & Burling, LLP
1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2401
(202) 662-5115

On Behalf of the Federal Communications
Commission

WILLIAM H. KNOWLES-KELLETT, ESQ

GARY OSHINSKY, ESQ

Investigations and Hearings Division

Enforcement Bureau

Federal Communications Commission

1270 Fairfield Road

Gettysburg, Pennsylvania 17325

(717) 338-2505

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9:36 a.m.

JUDGE SIPPEL: Got anything of a preliminary nature?

MR. PHILLIPS: Your Honor, one housekeeping matter. Your Honor asked about last night, about the board arrangements and the arrangements on the Tennis Channel Board.

And the board has several outside directors on it from different industries and different companies.

The board members have an understanding, it's not in the bylaws of the company, but they have an understanding that each of these independent directors, including the one director from Dish and the one director from DirecTV, would recuse themselves on decisions that come up that affect their own companies, so that, for example, another independent investor who will be from an investment firm, where there are issues that affect that, he will recuse himself from those

1 decisions, and the same thing if there's an
2 issue affecting Dish, it will recuse itself,
3 and an issue affecting DirecTV, that director
4 will recuse himself.

5 So, that's the workable -- working
6 for understanding among the board members.

7 JUDGE SIPPEL: Is it reduced to
8 writing --

9 MR. PHILLIPS: It is not reduced
10 to writing at all.

11 JUDGE SIPPEL: All right. It
12 probably should be, since I'm raising -- I'm
13 not raising this as an issue. I want to be
14 sure, though, but I would be interested in
15 knowing who the directors are and what their
16 affiliations are.

17 This is not because I'm looking at
18 an issue of possible over-reaching or
19 something like that. I'm just curious.

20 MR. PHILLIPS: That's fine, Your
21 Honor, and at the beginning of tomorrow, I'll
22 try to have that information.

1 JUDGE SIPPEL: That's fine.

2 MR. PHILLIPS: I don't have it off
3 the top of my head.

4 I've changed my seat today, as you
5 may have noticed, Your Honor, because --

6 JUDGE SIPPEL: I did. I was going
7 to bring that to your attention, but just to
8 let you know --

9 (Laughter.)

10 Just to let you know that I'm
11 paying attention.

12 (Laughter.)

13 But good job, you beat me to that.

14 MR. PHILLIPS: I appreciate your
15 attention, so that I'm paying attention.

16 (Laughter.)

17 I'll just have to get up there and
18 see.

19 My colleague, Ms. Leah Pogoriler,
20 is going to conduct the next examination, so--

21 JUDGE SIPPEL: Fine. Ms.
22 Pogoriler?

1 MR. PHILLIPS: I introduce her to
2 you, and after Mr. Carroll's preliminary
3 matters, we'll be glad to get started.

4 JUDGE SIPPEL: Good morning. Good
5 morning, ma'am.

6 MS. POGORILER: Good morning.

7 JUDGE SIPPEL: Nice to meet you.
8 Now, I still have the names unaccounted for
9 that's on that document.

10 MR. PHILLIPS: Oh, I've got those
11 too, Your Honor. I'm very sorry. I'll read
12 those into the record.

13 JUDGE SIPPEL: That would be fine.
14 Let me see -- well, let me get my pad, because
15 this might be good. Hold on just a second
16 though.

17 Okay, go ahead.

18 MR. PHILLIPS: This is Exhibit
19 726, and these are the names on that. There's
20 Mr. Garland, who was the head of ad sales at
21 the time. He's no longer with the company.

22 There was Bruce Rider. He was the

1 head of programming, also no longer with the
2 company.

3 Randy Brown, who was the head of
4 distribution, also no longer with the company.
5 Steve Bellamy, who was the president. He's
6 also no longer with the company.

7 JUDGE SIPPEL: You're ahead of me
8 now. Randy Brown was the former --

9 MR. PHILLIPS: President.

10 JUDGE SIPPEL: No, Randy Brown was
11 not the president.

12 MR. PHILLIPS: Oh, Randy Brown was
13 formerly head of distribution.

14 JUDGE SIPPEL: I've got foreman of
15 distribution. Got it.

16 MR. PHILLIPS: Steve Bellamy was
17 the former president.

18 JUDGE SIPPEL: Steve Bellamy,
19 okay.

20 MR. PHILLIPS: And Adam Weene was
21 the former head of business development.

22 JUDGE SIPPEL: How is his last

1 name spelled?

2 MR. PHILLIPS: W-E-E-N-E.

3 JUDGE SIPPEL: And he was what?

4 MR. PHILLIPS: Former head of
5 business development.

6 JUDGE SIPPEL: Okay.

7 MR. PHILLIPS: And then Bill Simon
8 was on it, and he was the newly-hired person
9 to become and who is now the president and I
10 believe the CFO.

11 JUDGE SIPPEL: CFO of the company?

12 MR. PHILLIPS: CFO, and as of a
13 year ago, the COO as well.

14 JUDGE SIPPEL: COO and CFO of
15 Tennis Channel. Okay. Okay.

16 All right. Thank you very much.

17 Mr. Carroll?

18 MR. CARROLL: Your Honor, good
19 morning.

20 JUDGE SIPPEL: Good morning, sir.

21 MR. CARROLL: A few housekeeping
22 preliminaries. Let me first follow up on a

1 point Mr. Phillips's addressed, the board
2 issue that Your Honor had raised yesterday on
3 the share ownership.

4 We've searched, and we don't find
5 any recusal mechanism in any of the legal
6 documents, either.

7 I did want to note for Your Honor
8 that the equity agreement that sets forth
9 precise equity shares and the equity
10 arrangement that was part of the equity
11 carriage deal for DirectTV is in the record as
12 Comcast Exhibit 100.

13 JUDGE SIPPEL: Thank you.

14 MR. CARROLL: That's for DirectTV.

15 JUDGE SIPPEL: Thank you.

16 MR. CARROLL: The equity agreement
17 for Dish that is part of the Dish equity
18 carriage arrangement is not in the record yet.
19 We have marked it as Comcast Exhibit 715, and
20 would -- there's no dispute about it. It's a
21 business record.

22 (Whereupon, the above-referred to

1 document was marked as Comcast
2 Exhibit No. 715 for
3 identification.)

4 And we'd think that if that's
5 admitted, then you would have each of the
6 equity agreements in the record that actually
7 sets forth the precise stock ownership
8 arrangements for each of those.

9 JUDGE SIPPEL: Fine.

10 MR. CARROLL: And I have copies to
11 hand out, Your Honor, of those, if you'd like.

12 JUDGE SIPPEL: Of those being
13 what?

14 MR. CARROLL: The new -- Exhibit
15 100 is already in record for DirecTV.

16 JUDGE SIPPEL: Right.

17 MR. CARROLL: Exhibit 715, the
18 newly marked one for Dish, is the one that I
19 would be handing out.

20 JUDGE SIPPEL: That's fine, sir.

21 MR. CARROLL: May I approach?

22 JUDGE SIPPEL: Please do.

1 MR. CARROLL: Thank you.

2 JUDGE SIPPEL: Any objection to
3 any of this? I take not.

4 MR. PHILLIPS: No, Your Honor.

5 JUDGE SIPPEL: Comcast Exhibit

6 715. MR. CARROLL: So now, Your Honor,
7 with each of those, with 100, which was
8 previously entered, and 715, you now have the
9 actual legal document that sets for the stock
10 that was given by Tennis Channel to both Dish
11 and DirecTV as part of those agreements.

12 JUDGE SIPPEL: Thank you.

13 MR. CARROLL: In addition, in
14 searching last evening for any documentation
15 related to attendance at the board meetings by
16 the Direct and Dish representative, we did
17 manage to find copies of a few board meetings
18 from 2010 that just list the people from
19 DirecTV and from Dish attending board
20 meetings, including attending board meetings
21 to review, apparently, the litigation against
22 my client in this case when it was being

1 briefed.

2 And I mention that because I
3 wasn't sure yesterday whether the claim was
4 being made that they were disqualifying
5 themselves from distribution matters.

6 It sounds to me this morning that
7 it's a narrower claim that's being made, that
8 DirecTV and Dish representatives were only
9 recusing themselves from things related to
10 themselves, Direct and Dish --

11 JUDGE SIPPEL: I heard that.

12 MR. CARROLL: -- but not from all
13 distribution matters.

14 JUDGE SIPPEL: I heard that.

15 MR. CARROLL: That does seem
16 consistent with what we've seen, which is they
17 are present at board meetings where
18 distribution relating to my client, Comcast,
19 is being discussed.

20 These again are business records.
21 We have a few of them that we've put together.
22 Let me show it to the other side, if I may --

1 JUDGE SIPPEL: Please do.

2 MR. CARROLL: -- just to see if
3 they have an objection.

4 JUDGE SIPPEL: Please.

5 MR. CARROLL: This is Exhibit 730.
6 They are just some sample board minutes.

7 (Whereupon, the above-referred to
8 document was marked as Comcast
9 Exhibit No. 730 for
10 identification.)

11 JUDGE SIPPEL: Did I get one?

12 MR. CARROLL: Yes, I was -- I
13 started with them to make sure they had no
14 objection.

15 JUDGE SIPPEL: Oh, yes. No, go
16 right ahead.

17 MR. CARROLL: I don't intend to do
18 anything more with this other than to offer it
19 into evidence just so you have a record of
20 board attendees.

21 On the first sheet, I'm told Mr.
22 Chang, who's listed, you'll see, in the second

1 paragraph where it lists the attendees, Derek
2 Chang is actually a representative from
3 DirecTV. He's actually in charge of
4 distribution, I'm told, of DirecTV.

5 And on the next board minute, from
6 May 5 -- oh, as well, the board representative
7 from DirecTV is at that meeting, Dan Hartman,
8 who's listed on the line above Mr. Chang.

9 And then on the next board minute,
10 the second paragraph has Mr. Hartman listed
11 again from DirecTV, and also has the
12 representative from Dish, who I'm told is
13 Carolyn Crawford, also participating in that
14 board meeting.

15 Those are all those attendees that
16 you see listed in the second paragraph of each
17 board meeting.

18 JUDGE SIPPEL: Okay. I see
19 Carolyn Crawford is not at the February 10th
20 meeting?

21 MR. CARROLL: Correct.

22 JUDGE SIPPEL: But she's at a

1 later meeting.

2 MR. CARROLL: She's at the second
3 one. I've given you two sets of board
4 meetings --

5 JUDGE SIPPEL: I see that.

6 MR. CARROLL: -- just so you can
7 see that.

8 JUDGE SIPPEL: No, I see that.

9 MR. CARROLL: On the second one,
10 on May 5th, Carolyn Crawford, she is the
11 representative, I'm told, from Dish. Mr.
12 Hartman is also at that one. He's the
13 representative on the Board from DirecTV.

14 At the first meeting, DirecTV also
15 had an additional person present on this one,
16 Mr. Chang, who I'm told is in their
17 distribution area.

18 So we offer these just as a sample
19 of two of the board minutes that indicate that
20 DirecTV and Dish personnel are in fact
21 participating in board meetings in the manner
22 set forth here.

1 JUDGE SIPPEL: Thank you. Now,
2 that's marked as an exhibit?

3 MR. CARROLL: 730.

4 JUDGE SIPPEL: Okay. Mr.
5 Phillips?

6 MR. PHILLIPS: Your Honor, we
7 don't really see what the relevance of all of
8 this is, but we're not going to object to its
9 admission.

10 JUDGE SIPPEL: Thank you.

11 Well, as I say, right now, for my
12 purposes, it's the purposes of sort of
13 completing the circle, in a sense, because
14 there's -- so many things talked about this
15 thing, and it would be nice to be able to
16 bring it to a conclusion.

17 MR. PHILLIPS: I understand, Your
18 Honor. And I also appreciate Your Honor's
19 desire to sort of have as in-depth an
20 understanding of everything that's going on
21 here.

22 JUDGE SIPPEL: Really?

1 MR. PHILLIPS: Absolutely.

2 (Laughter.)

3 JUDGE SIPPEL: Thank you very
4 much. Thank you very much, and I appreciate
5 that. All right. So then --

6 MR. CARROLL: The only other
7 housekeeping I had, Your Honor --

8 JUDGE SIPPEL: Yes, sir.

9 MR. CARROLL: -- is the list of
10 exhibits that we used on the cross examination
11 of Mr. Solomon, and to offer into evidence
12 those that were already not admitted
13 previously, but were used during his cross
14 examination.

15 And if it's convenient, Your
16 Honor, I could read that list of numbers in
17 right now, and just formally offer those up
18 for admission into the record to complete the
19 record in that regard.

20 JUDGE SIPPEL: Yes, that makes
21 sense.

22 Mr. Phillips, does that make sense

1 to you?

2 MR. PHILLIPS: It makes sense for
3 him to read the ones in. And my colleague,
4 Mr. Schmidt, wants to address, I think, one of
5 them.

6 JUDGE SIPPEL: All right. Do you
7 want to wait until he gets to it, or do you
8 want to --

9 MR. CARROLL: Yes, Your Honor.

10 JUDGE SIPPEL: That's fine. Okay.
11 You may proceed.

12 MR. CARROLL: All right. The
13 exciting list of exhibit numbers, Your Honor -
14 - these are all Comcast Exhibits, 659, 701,
15 703, 704, 705, 707, 708, 709, 723, 725, and
16 726. We would offer those into evidence.

17 MR. SCHMIDT: We have no objection
18 to those coming into evidence. Obviously, we
19 would dispute the relevance of some of them.

20 The one that I have the specific
21 comment on was 659. We don't object to it
22 coming into evidence, but I think it has a

1 math error in it.

2 JUDGE SIPPEL: I'm sorry?

3 MR. SCHMIDT: As I understand,
4 659, it has a math error.

5 JUDGE SIPPEL: A math error?

6 MR. SCHMIDT: Yes.

7 JUDGE SIPPEL: Well, let's get to
8 it.

9 MR. SCHMIDT: Okay. As I
10 understand, what 659 is, is it was taken from
11 -- that's the table of the --

12 JUDGE SIPPEL: I'm coming to it.
13 I'm coming to it. Rubber bank problem here.
14 Okay. 659.

15 MR. CARROLL: It should be the
16 chart of the 2009/2010 distribution percentage
17 levels.

18 MR. PHILLIPS: That's correct.

19 JUDGE SIPPEL: That sounds good to
20 me, but I've got to find the number for --
21 I've got 701, I'm getting there.

22 MR. CARROLL: It's in the white

1 binder. I actually used it in the opening as
2 well, Your Honor, if that's easier.

3 JUDGE SIPPEL: It would be, but
4 except that I have it here.

5 MR. CARROLL: All right.

6 JUDGE SIPPEL: And I have lots of
7 stuff on it. See all the arrows and stuff.

8 MR. CARROLL: Let me just remind
9 you, the number is -- at your request, is
10 confidential. So, we're in an open session.
11 If you're going to have to do math --

12 MR. SCHMIDT: I promise I will not
13 do math, but I might reference the numbers, so
14 --

15 JUDGE SIPPEL: Well, would it be
16 possible for him to just point to the numbers,
17 without identifying --

18 MR. SCHMIDT: Let me explain what
19 I think happened here. On the second half of
20 the chart, the 2010 chart --

21 JUDGE SIPPEL: Yes.

22 MR. SCHMIDT: This comes from Mr.

1 Orszag's report, where he has the different
2 carriage levels.

3 I think what happened here is they
4 removed one of the cable companies from this
5 list, as it appeared in Mr. Orszag's report,
6 and when you remove that company from the
7 list, the average at the bottom changes
8 slightly. It increases by a percent.

9 JUDGE SIPPEL: Okay.

10 MR. SCHMIDT: It's not of great
11 moment, but for accuracy I felt like I should
12 comment on it.

13 JUDGE SIPPEL: Okay. Thank you.
14 Now, so what number do I need to change? The
15 one at the very bottom?

16 MR. CARROLL: Well, actually, let
17 me propose the following, Your Honor. We
18 actually don't agree with that, and think Mr.
19 Schmidt is not correct about that.

20 JUDGE SIPPEL: Okay.

21 MR. CARROLL: Mr. Orszag, these
22 are based on his calculations. He's going to

1 be a witness here --

2 JUDGE SIPPEL: Yes, he will.

3 MR. CARROLL: -- in about a day,
4 so they can cross-examine if they think
5 there's an accuracy issue.

6 I would submit that's probably the
7 better way to proceed on this, and that since
8 there's no objection to the document itself,
9 it sounds like we have a cross issue as to
10 whether there's an accuracy issue or not here.

11 I would propose that the document
12 be admitted, and Mr. Schmidt's registered the
13 point that he wants to dispute one of these
14 percentages, I gather, on cross examination,
15 which --

16 JUDGE SIPPEL: Well, I agree --
17 whatever way it's done, with Mr. Orszag, since
18 these are his numbers, it should be done with
19 him on the stand.

20 MR. CARROLL: I know.

21 MR. SCHMIDT: I'm fine with that,
22 Your Honor.

1 JUDGE SIPPEL: Is that okay?

2 MR. SCHMIDT: Yes, we're fine with
3 that.

4 JUDGE SIPPEL: All right.

5 MR. SCHMIDT: I think it's just a
6 math error. I don't think it's of any great
7 moment.

8 JUDGE SIPPEL: Well, you've got
9 remember, now, Mr. Phillips wants me to know
10 the record perfectly.

11 (Laughter.)

12 He's going to test me on it.

13 JUDGE SIPPEL: Okay. That's fine.
14 That will work. That will work.

15 MR. CARROLL: Your Honor, the
16 other -- if there's no objection then, are the
17 other exhibits, including the chart 659,
18 admitted into evidence?

19 JUDGE SIPPEL: Well, let's do it
20 this way. You're moving Exhibits 659 through
21 726, as you have listed them, into evidence at
22 this time?

1 MR. CARROLL: Correct.

2 JUDGE SIPPEL: As Comcast
3 exhibits.

4 MR. CARROLL: Correct.

5 JUDGE SIPPEL: And there's no
6 objection from Tennis Channel.

7 MR. PHILLIPS: Correct.

8 JUDGE SIPPEL: Subject to
9 comments, but I mean, there's really no
10 objection.

11 MR. PHILLIPS: Yes. Right.

12 JUDGE SIPPEL: Okay. Then those
13 documents, I won't list them again here, but
14 from 659 through 726 are now received in
15 evidence as Comcast Exhibits as identified on
16 the record.

17 (The documents, having been marked
18 previously for identification as
19 Comcast Exhibits Nos. 659, 701,
20 703, 704, 705, 707, 708, 709, 715,
21 723, 725, and 726, were received
22 in evidence.)